

<b>State of South Carolina</b>	)	<b>Before the Chief Procurement Officer</b>
	)	
<b>County of Richland</b>	)	<b>Decision</b>
	)	
<b>In Re: Vogel Traffic Services, Inc, dba</b>	)	
<b>EZ-Liner Industries.</b>	)	<b>Case 2009-106</b>
	)	
<b>Protest of Award: Solicitation SB9973-</b>	)	<b>Posted: 04/27/2009</b>
<b>12/17/08, Centerline Striping, Truck</b>	)	<b>Mailed: 04/27/2009</b>
<b>Mounted, Meeting Requirements of SCDOT</b>	)	
<b>Spec 0052-15-07/31/2008</b>	)	
	)	

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The South Carolina Consolidated Procurement Code grants the right to protest to any bidder who is aggrieved in connection with the solicitation or award of a contract. EZ-Liner Industries (EZ) filed a protest (Attachment 1) of solicitation SB9973-12/17/08, Centerline Striping, Truck Mounted, Meeting Requirements of SCDOT Spec 0052-15-07/31/2008, awarded to M-B Companies, Inc. (MB) issued by the South Carolina Department of Transportation (DOT). Under a delegation by the Materials Management Officer, the Chief Procurement Officer for Information Technology (CPO) conducted a hearing on the issues of protest on April 17, 2009. Present at the hearing before the CPO were representatives from EZ, DOT, and MB.

### **Findings of Fact**

Solicitation Issued	November 25, 2008
Bids Received	December 17, 2008
Intent to Award Issued	January 29, 2009
Protest Received	February 5, 2009

### **Discussion**

The SCDOT issued this solicitation for a truck with a mounted centerline striping machine. EZ Liner's low bid was declared non responsive to two mandatory specifications and was disqualified. EZ protests the determination by DOT that the bid it submitted was non-responsive to two specifications and requests the determinations be overturned and EZ be awarded the contract.

The first specification, as published in the solicitation, required that the centerline machine air and hydraulic systems and the operator's station heating and cooling system be powered by a John Deere, or Cummins diesel engine with a minimum set SAE horsepower of 80. (At page 2, paragraph 8) The solicitation also required bidders to complete a questionnaire which asked, in part for the make, model, and net SAE horsepower. In completing the questionnaire, EZ indicated that was bidding a John Deere model 4045D running at 2300 RPM and producing 78 HP. The manufacturer's specification sheet which was attached to the bid also indicated that the 4045D, operating at 2300 RPM produces 78 HP. However the manufacturer's specification sheet also shows that the 4045D operating at 2500 RPM produces 80 HP. The solicitation did not specify a maximum speed at which the equipment would operate. While EZ's response to the questionnaire indicated that it was bidding an engine that did not meet the published specifications the attached documentation indicated that the equipment could produce the required horsepower and SCDOT conceded that EZ's bid was responsive to this specification.

The second published specification to which EZ was found nonresponsive is related to the capacity of the bead gun which dispenses reflective glass beads which enhance visibility of the striping at night. The capacity of the gun determines the amount of reflective glass beads that are dispensed. The published specification required that the proposed bead gun have a capacity of 35 lbs. per minute at 40 – 60 psi air pressure. (Specification 16.9.3, at page 8) EZ bid a Binks Model 30 Automatic Glass Bead Dispensing Gun. The manufacturer's specification sheet attached to EZ's bid indicates that the Model 30 delivers glass beads at the rate of up to 20 lbs. per minute. In its letter of protest, EZ indicates that the Model 30 with the addition of an Optional Big Bore Kit delivers up to 60 lbs. per minute however this information is not reflected on the manufacturer's specification sheet or elsewhere in EZ's bid. In addition, there nothing in EZ's bid that indicates it intended to bid the optional big bore kit.

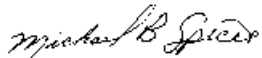
### **Determination**

There is no question that for highway safety considerations, the minimum output capacity of the bead gun stated in the solicitation is an essential requirement. There is no indication in its bid that EZ intended to bid anything other than the standard Binks Model 30 bead gun. EZ's bid had to be accepted and evaluated without alteration or correction. (§11-35-1520(6)) The standard

Binks Model 30 bead gun fails to meet this minimum output requirement as stated in the solicitation. Budget and Control Board Regulations require that any bid which fails to conform to the essential requirements of the invitation for bids must be rejected. (Regulation 19-445-2070A) For these reasons, EZ's protest is denied.

**Protest Denied.**

For the Information Technology Management Office

A handwritten signature in black ink, appearing to read "Michael B. Spicer". The signature is written in a cursive, flowing style.

Michael B. Spicer  
Chief Procurement Officer

04/27/2009

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



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ECUPD 810 CONTROL

February 5, 2009

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

Solicitation: SB9973  
Issue Date: 11-25-2008  
Opening Date: 12-17-2009  
Description: Centerline Striping, Truck Mounted, Meeting Requirements of SCDOT  
Spec.0052.15-07/31/2008

Dear Chief Procurement Officer:

Thank you for giving us the opportunity to submit this letter of protest in response to the Intent to Award letter dated January 29, 2009 for Solicitation SB9973. We feel we have been incorrectly rejected as low bidder because of a material nonconformity in the auxiliary engine and the bead gun we have proposed to provide for the Centerline Striping Truck.

On page 2 of SCDOT Spec. No. 0052.15-07/31/2008 in paragraph 8 Auxiliary Engine, the specifications call for "...a John Deere, or Cummins diesel engine with minimum SAE horsepower of 80." The engine we proposed is the John Deere Model 4045D which is the power source for the Ingersoll-Rand utility mount air compressor Model P250WJDU. The attached John Deere Performance Data sheet for their 4045D engine lists the horsepower at 80hp @ 2500 rpm. Since an rpm rating is not listed in Spec. 0052.15-07/31/2008 the John Deere 4045D engine conforms to the specification requirements.

On page 8 of the specifications in paragraph 16.9.3 the bead guns are described as follows: "Capacity shall be 35 lbs. per minute at 40-60 psi air pressure." In paragraph 16.9 the statement is made that the bead guns shall be Kamber 90HO or equal. Prior to the publication of these bid documents in a conversation with a representative of the SC DOT it was stated that the Binks Model 30 is considered an equal. The Model 30 in its standard configuration is rated at 20 lbs. per minute, but with the addition of Part # 6-1287 Optional Big Bore Kit the rating increases to 60 lbs. per minute exceeding the 35 lbs. per minute requirement. Whether the Binks bead gun is set up with a standard configuration or equipped with the Big Bore Kit you will notice that the gun is still referred to as the Model 30 gun in the Binks literature.

The John Deere Model 4045D engine and the Binks Model 30 bead gun components we are proposing to provide do conform to Spec. No. 0052.15-07/31/2008. Based upon this information and supporting documentation we feel that we are the low, responsive and responsible bidder and should therefore be awarded the contract for Solicitation SB9973. Thank you again for allowing us to present our case.

We look forward to working with the SC DOT in providing their new Centerline Striping Truck.

Sincerely,

  
Dave Van Gorp  
Vice President  
Vogel Traffic Services, Inc.  
DBA EZ-Liner Industries